BOOK REVIEWS.

NOTES ON MASSACHUSETTS PRACTICE WITH REFERENCE TO PROCEEDINGS BEFORE MASTERS AND AUDITORS. By Frank Paul. Boston: Little, Brown, and Company. 1909. pp. xvi, 234.

This book is a work invaluable in its special field. It is perhaps to be expected that, dealing with such a subject, it should be so arranged that all the points on one part of the subject should be grouped together and that it should be so indexed that any one point might readily be discovered. The law of procedure is easily analyzed. But it does not offer an inspiring field for careful argument. We are pleasantly surprised therefore to find in this book new points of practical importance raised, conflicting authorities carefully compared, analogous decisions and statutes discussed and, when necessary, the course of development of statutes traced, as if a principle of substantive jurisprudence were in question. Furthermore, whether in considering a new point or a point of conflict the author has not hesitated to state his conclusion, with his reasons for it, thereby giving the reader who will agree with him the benefit of the opinion of one who has studied the whole field, and showing the reader who will disagree with him some points which must be overcome. The book promises to be one to which the practitioner may turn and find his point treated, not missed — a high recommendation when the subject includes the many worrying little details of practice. P. K.

THE HOUSE OF LORDS ON THE LAW OF TRESPASS TO REALTY AND CHILDREN AS TRESPASSERS. By Thomas Beven. London: Stevens and Haynes. 1909. pp. 48.

The legal profession are indebted to a recent decision of the House of Lords,[1] for this interesting and instructive pamphlet. That decision goes far towards committing the courts of last resort in Britain to the doctrine, approved by our Federal court of last resort, in *Railroad Company* v. *Stout* (1873), 17 Wall. 657. In each case, the plaintiff was a child of tender years (four years and six years respectively), who was injured while playing with a turn-table on the defendant's land, at some distance from the highway. Of course, neither turn-table was placed on its land by the defendant, with a view of alluring children to use it as a plaything, but solely for its lawful business as a railroad company. The machinery was not in, or immediately adjoining, a highway, nor was either plaintiff rightfully upon defendant's premises, when injured. Nor had such plaintiff an express license from the defendant to be upon its land, and the only implication of license seems to be found in the facts, that defendant knew or had reason to believe that children would enter upon its land for the purpose of playing with the turn-table, and did not take effective measures to prevent them from so trespassing. In each case, it is declared to be a question for the jury, whether the defendant was guilty of actionable negligence towards the child.

Sir Frederick Pollock has expressed the opinion that all the Lords decided in the Cooke Case "is that licensees known to the licensor to be, by no fault of their own, incapable of exercising the caution of a normal man are entitled to a measure of special care in proportion to their imbecility." In his judgment, the rule of law laid down is one of narrowly limited extent, though he admits "some persons may be encouraged to bring speculative and fruitless actions," because

[1] Cooke *v.* Midland G. W. Ry. Co., [1909] A. C. 229, 78 L. J. C. P. 76, reversing S. C. in [1908] 2 Ir. 242.

they "think the decision goes further than it really does."[1] Mr. Beven declares that such actions have been started. This knowledge on his part, and his belief that such actions will lead to the "payment of hundreds of pounds as blackmail," appear to have aroused him to the publication of this pamphlet.

We have spoken of it as interesting and instructive. No lawyer, we are sure, who begins its perusal will lay it aside unfinished. Its style is particularly clear and trenchant, while its criticism of the various judgments of the learned Law Lords is searching and fearless. Possibly his comments on Lord Atkinson's "involved and difficult" judgment are too severe, but it cannot be doubted that he expresses accurately the feeling of most persons who have read this judicial deliverance, when he says: "Readers of this and much more like it to be found in the report must feel a very similar admiration to that which Plato in the Euthydemus represents Socrates to express when he found himself the sport of those nimble and elusive word-fencers Euthydemus and Dionysodorus."

The pamphlet is instructive, by reason of its careful and thorough analysis of preceding English decisions, bearing upon the point involved, and its statement of the legal principles applicable to the facts of this case. Our author contents himself with a brief reference to American cases upon this topic, and refers his readers to "two admirable articles in the HARVARD LAW REVIEW,[2] by Professor Jeremiah Smith, who arrives at conclusions similar to those presented here." Those articles, Mr. Beven can be assured, have exercised a wholesome influence over later decisions in this country.[3] It is to be hoped that his pamphlet may produce a like effect in England.[4] F. M. B.

THE EFFECT OF WAR ON CONTRACTS AND ON TRADING ASSOCIATIONS IN TERRITORIES OF BELLIGERENTS. By Coleman Phillipson. London: Stevens and Haynes. 1909. pp. 114.

This brief, well written essay, covering both common law and continental rulings, won the Quain Prize in the Department of Comparative Law at University College, London, 1908. Our only general criticism is that we feel it probable that the author might have found additional light, or at least a few more citations of especial interest to American readers, had he had access to a greater number of decisions of American courts. As a whole, however, the work is commendable, both from the book-writing and the book-publishing standpoints.

The author's idea that the nationality of a corporation depends on its place of charter; its domicile, on its principal place of business, seems eminently sound. But not so his statement that theoretically war will destroy the rights of a shareholder in an enemy corporation, since the right is technically a contractual one, and executory. Though it is technically contractual, — or is at least a *chose in action*, it does not seem executory in the sense that war would destroy it. The right to participate in the management of the company might cease during war, but it is believed that all other rights and obligations should, as in the case of an ordinary contract debt, continue in existence during the war and become enforceable at its end. At the worst, it seems to the reviewer that the shareholder should, if his rights in his shares are destroyed, recover at the end of the war an

[1] Notes, 25 Law Quarterly Rev. 229.

[2] Vol. XI, pp. 349, 434.

[3] See Savanah, F. & W. Ry. *v.* Beavers, [1901] 113 Ga. 398, 39 S. E. 82, 54 L. R. A. 314, commending these articles and avowing the intention to limit the turn-table cases doctrine. A group of cases in 19 L. R. A., N. S., pp. 1095–1173, and the extensive note thereto, show a similar tendency on the part of other courts to limit or repudiate the "attraction nuisance" theory.

[4] Lowery *v.* Walker, [1909] 2 K. B. 433, 78 L. J. K. B. 874, affords some justification for this hope.